

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company (U 338-E) for Approval of a Power Purchase Agreement under PUHCA Section 32(k) Between the Utility and a Wholly-Owned Subsidiary and for Authority to Recover the Costs of Such Power Purchase Agreement in Rates.

Application 03-07-032  
(Filed July 21, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

This ruling sets forth the procedural schedule and addresses the scope of the proceeding in accordance with Rule 2.5 of the Commission's Rules of Practice and Procedure following a Prehearing Conference (PHC) that was held on August 13, 2003. In addition, this ruling denies the Independent Energy Producers Association's (IEP) motion for consolidation.

**Background**

Southern California Edison Company (Edison) filed an application on July 21, 2003, seeking Commission authorization to enter into a contract with a wholly-owned utility subsidiary that currently has the rights, permits, and contracts to build a new state-of-the-art combined-cycle generating station, known as the Mountainview Power Project (Mountainview). Mountainview is a power generation facility located in Redlands, California, with an expected net electrical output of 1,054 MW, with a low target heat rate of 7,100 Btu/kWh. The facility will use natural gas as its sole fuel.

Mountainview is presently owned by Mountainview Power Company, LLC (MVL), a wholly owned subsidiary of Sequoia Generating Company, LLC (Sequoia). Edison has entered into an option agreement with Sequoia for the right to acquire MVL in its entirety, as a wholly owned subsidiary, including existing entitlements and obligations. Sequoia has contractual arrangements intended to cover engineering, procurement, construction, major equipment and gas, water, and electric interconnections. Completion of the facility would proceed pursuant to Sequoia's already negotiated construction contracts. Under the option agreement, if the acquisition of MVL is completed by November 30, 2003, the price is fixed. Edison may extend the option term through February 29, 2004, but the price and option payments increase.

Edison proposes entering into a power purchase agreement (PPA) with MVL. Edison plans to first acquire MVL as a wholly-owned subsidiary, and then MVL will recommence full construction of Mountainview. The Mountainview PPA will be a 30-year, cost-of-service contract. Edison proposes financing the acquisition of Mountainview as a wholly-owned subsidiary through existing debt and equity proceeds with the operation and maintenance costs recovered through the ratemaking mechanism established for recovering procurement costs. Edison structured the transaction to satisfy investors that they will receive their cost recovery under the federal Filed Rate Doctrine.

As a corollary to the application, Edison also requested that the Commission set an expeditious schedule, including a shortened protest period, so that a decision could receive Commission approval by the end of 2003. The Commission did not shorten the protest period, but did set an early PHC, and directed the parties to brief important threshold issues.

Because Edison views Mountainview as a very attractive opportunity to acquire 1,054 MW of additional generation capacity, well located within Edison's service territory, at a price significantly below the estimated full construction cost of a comparable facility, Edison's application asks the Commission to accelerate the process so the opportunity will not be lost by having the options expire without Commission approval. As part of this acceleration, certain conventions were not followed.

To begin, Edison did not engage in a competitive bidding process before filing the Mountainview application. A number of parties raised concerns that without the "market test" that a Request for Proposal (RFP) provides, the Commission would not have sufficient cost information to rule on the application. Parties were requested to brief whether a RFP was necessary, and if so, how could a meaningful one be done in a timeframe that would allow a Commission decision before the end of the year. Briefs on the RFP issue were received from the Alliance for Retail Energy Markets (AReM) and the Western Power Trading Forum (WPTF); Sempra Energy Resources (SER); Office of Ratepayer Advocates (ORA); Navajo Nation; Independent Energy Producers Association (IEP); California Cogeneration Council (CCC); Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC); Sequoia Generating Company (Sequoia); and Edison.

Because of the need for an expedited schedule, we will not require Edison to conduct an RFP for Mountainview. Instead, Edison's Procurement Group (PRG) will convene and examine Edison's proposal, as discussed in more detail later in this memo.

In addition, the mechanism Edison chose for this transaction, owning Mountainview as a wholly owned subsidiary under a 30-year contract to the

regulated utility that will be reviewed and approved by the Federal Energy Regulatory Commission (FERC), instead of applying to the Commission for a Certificate of Public Convenience and Necessity (CPCN), was also of concern to the Commission and many parties. Parties were asked to brief whether Edison's proposed mechanism was in the public interest from a ratepayer perspective. Briefs on this issue were received from CAC and EPUC; California Large Energy Consumers Association (CLECA); AReM; the Navajo Nation; ORA; the Utility Reform Network (TURN); and Edison.

Protests to Edison's application were received from AReM; the Center for Energy Efficiency and Renewable Technologies (CEERT); the California Manufacturers & Technology Association (CMTA); CLECA; CCC; CAC and EPUC; IEP; and ORA.

The Commission and numerous parties were hopeful that the California legislature would pass legislation eradicating the financial community's concerns about the financial security of the transaction as proposed by Edison. The legislation did not pass, so the wholly-owned subsidiary mechanism will remain a component of Edison's application.

## **Category, Need for Hearing, and Scoping Memo**

### **A. Category**

We affirm the Commission's preliminary determination that this proceeding should be categorized as Ratesetting, and that hearings are necessary because there are factual issues in dispute. In its application, Edison proposed this characterization, and no protestants disputed it. Ex parte communications are subject to Rule 7 of the Commission's Rules of Practice and Procedure.

**B. Hearing**

Hearings are needed in this proceeding. We set the following dates for hearings: October 14 – 24, 2003, beginning at 10:00 a.m.

### **C. Scoping Memo**

In its application, Edison specifically asks that the Commission make findings on the following topics:

- Does the Mountainview PPA comply with PUHCA Section 32(k) so that ratepayer interests are protected. In order to make this finding, the Commission must find that it has sufficient regulatory authority, resources, and access to books and records of both Edison and MVL to make the findings required by Section 32(k) of PUHCA. Then the Commission must determine if the Mountainview PPA will benefit consumers, conforms with State law, does not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with Edison, and is in the public interest;
- Do the Commission's Affiliate Transaction Rules (ATR) apply to the interactions between Edison and its new MVL subsidiary, or if MVL is deemed an affiliate, should the Commission find exemptions to the ATRs to facilitate the transactions sought by Edison;
- Is the Environmental Review undertaken and completed by the California Energy Commission (CEC) sufficient to satisfy the requirements of the California Environmental Quality Act (CEQA) so that there is no need for additional environmental review by the Commission;
- Is Edison required to file a CPCN for the construction of its generation facility;
- Can Edison use the proceeds of debt and equity financing, previously approved by Commission Decision (D.) 98-02-104 and D.00-10-063, for the acquisition of Mountainview as a wholly-owned subsidiary;

- Do the provisions of the Qualifying Facility (QF) settlement adopted in D.93-03-021 apply to the transaction between Edison and MVL;
- Should the Commission authorize Edison to recover the costs of operating Mountainview through its energy Recovery Resource Account (ERRA), including fuel costs, operating and maintenance costs, capital costs, and availability and heat rate incentives;
- Should the Commission explicitly support Edison's filing at FERC to approve the PPA under Section 205 of the Federal Power Act.

In addition to the topics identified by Edison in its application, other parties and the Commission are interested in including the following topics in the scope of the proceeding:

- Is Edison's proposal to receive FERC regulated power from a subsidiary of the utility in the best interest of the ratepayers;
- Has Edison demonstrated a "need" for the power from Mountainview, and/or is it premature to consider the need issue before a decision is issued in the procurement OIR;
- Since there was no competitive bidding procedure for Mountainview, how can the Commission and the intervenors determine if the Mountainview project is cost-effective and in the best interest of the ratepayers;
- If the Commission approves Edison's acquisition of Mountainview as a wholly-owned subsidiary, how should cost-overruns on the construction of the generating plant be handled;
- If the Commission approves Edison's acquisition of Mountainview as a wholly-owned subsidiary, with the financing mechanism proposed by Edison, what conditions should the Commission propose that FERC should impose to address

concerns raised by the Commission and parties to Edison's application.



- If the Commission approves Edison's acquisition of Mountainview as a wholly-owned subsidiary, and exempts MVL from the Affiliate Transaction Rules, what mechanisms and policies will be in place that will prevent subsidy of this enterprise by ratepayers and that will prevent the subsidy of Edison's unregulated affiliates by MVL.

### **Edison's Procurement Review Group**

To allay some of the concerns raised because there was no competitive bidding process, the Commission will direct Edison's Procurement Review Group to convene and conduct a detailed review of Edison's proposal, specifically, to examine the proposed level of ratepayer benefit and associated issues. An initial PRG meeting date is proposed in the procedural schedule shown below, however, this date need not be absolutely firm. The purpose of including an initial PRG meeting date is to direct the PRG to convene as soon as possible so that PRG members, some of whom are active non-market participants in this proceeding, may augment their filing accordingly as a result of detailed PRG review and discussion.

With regard to confidentiality, parties must, of course, take all necessary steps to maintain confidentiality through the clear and careful use of redacted and confidential filings and/or confidential attachments as needed. With regard to electronic distribution of redacted materials, parties must take extreme care to check and double-check electronic documents to ensure that confidential text cannot be copied from a redacted document. Parties unsure as to the security of their redacted documents should not distribute them electronically or, alternatively, request assistance from another PRG member, including the utility of the Energy Division, to determine whether a document is secure. Confidentiality shall be maintained.

**Procedural Schedule**

Initial PRG Meeting	September 19, 2003
Interested Party Testimony	September 26, 2003
Edison Reply Testimony	October 3, 2003
Evidentiary Hearing	October 14 – 24, 2003, at 10:00 a.m., 505 Van Ness Avenue, State Office Building, San Francisco, CA
Concurrent Opening Briefs Due	October 31, 2003
Concurrent Reply Briefs	November 7, 2003
Proposed Decision Issued	November 18, 2003
Comments on Proposed Decision	November 28, 2003
Reply Comments	December 3, 2003
Decision before the Commission	December 18, 2003

Pursuant to Rule 77.7(g) of the Commission's Rules of Practice and Procedure, if all parties stipulate to reduce the comment period, allowing the proposed decision to be issued after November 18, 2003, the schedule may be modified to allow parties additional time to file opening and reply briefs. Parties will be polled on the last day of hearing to determine if all parties so stipulate to the time reduction.

**Motion to Consolidate**

The Independent Energy Producers Association (IEP) filed a motion on July 25, 2003, to consolidate Edison's application for Mountainview, A.03-07-032, with the Commission's Generation Procurement Rulemaking (R.) 01-10-024. Edison, the California Small Business Roundtable (CSBRT) and the California Small Business Association (CSBA), and Sequoia filed written opposition to the motion, and numerous parties expressed their view on consolidation at the August 13, 2003 PHC.

In summary, IEP argued in favor of the consolidation on the grounds that the proceedings are extraordinarily interrelated, with overlapping issues of law

and fact, and it would promote judicial and administrative efficiency to have the parties and the Commission focusing on one proceeding, rather than two separate ones.

The Commission appreciates IEP's concerns. However, R.01-10-024 deals with broad policy issues on the short and long-term resource plans for all the large investor-owned utilities, whereas Edison's application addresses one discreet issue: will the Commission allow Edison to acquire Mountainview as a wholly-owned subsidiary.

In addition, Edison's application will have to proceed on an expedited schedule in order for the Commission to issue a decision before the option expires on February 29, 2004. Hearings are already complete in the rulemaking and briefs are due. Testimony has not even been served in the application, hearings must take place, and briefing must follow. Although the decision in the OIR is targeted for this calendar year, if the proceedings were consolidated, the decision could get delayed. If Mountainview is not resolved in time for Edison to receive FERC approval before the option expiration date, Mountainview may no longer be a cost-efficient option.

IEP's motion to consolidate is denied, and the OIR and the application will proceed on their own respective schedules.

### **Service List**

The official service list is now on the Commission's web page. Parties should confirm that the information on the service list and the comma-delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the judge. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

## Hearing Preparation

Hearings are scheduled for October 14-24, 2003. In preparation for the hearings, all parties are directed to participate in a prehearing meet-and-confer session<sup>1</sup> no later than October 9, 2003, for the purpose of identifying the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. As the applicant, Edison should initiate and coordinate the meet-and-confer session.

To the extent feasible, parties should exchange exhibits in advance of this meet and confer so any objections can be addressed at that time.

Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on October 14, 2003, will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Parties should serve, but not file, proposed testimony and rebuttal testimony. Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

### **IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.

---

<sup>1</sup> The parties may meet telephonically if it is more convenient than an in-person meeting.

3. Ex parte communications are subject to Rule 7 of the Commission's Rules of Practice and Procedure.

4. Parties shall follow the service list rules as set forth herein.

5. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix "A" hereto.

6. The scope of the proceeding is as set forth herein.

Dated September 16, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

## **APPENDIX A**

### **Hearing Room Ground Rules**

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. (Present estimate: five copies.) The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit. Parties should pre-mark exhibits when feasible.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
5. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
6. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
7. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.

8. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.
9. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated September 16, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.